**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**APPEAL FROM ORDER NO.262 OF 2004**

Sakurnnisa Rais Khan & Anr. ...Appellants

Vs.

Mumbai Metropolitan Regional
Development Authority ...Respondent

Mr.S.P.Srivastava for the Appellants
Mr.R.M.Sawant for the Respondent.

**CORAM: A.S.OKA, J.**
**DATED: APRIL 11,2005.**

**P.C.:**

1. Heard Advocates for the parties. Admit. Respondent waives service. Taken up for hearing forthwith.

2. The challenge in this Appeal from Order is to the Judgment and Order dated 16th February 2004 passed by the learned Trial Judge by which a prayer for grant of ad-interim injunction made by the Appellants has been rejected. The learned Trial Judge held that the Respondent desires to demolish the structures of the Appellants for public purpose and there were no documents on record to show the existence of the structure prior to the year 1995.

3. The Advocate for the Appellants has placed reliance on the order dated 28th August 2003 passed by the Deputy Collector (Encroachment and Removal) and Competent Authority, Bandra in favour of the Appellant No.2 which prima facie shows that the structure of the Appellant No.2 is entitled to

protection. There is one more order on which the reliance is placed which is also dated 28th August 2003 passed by the Deputy Collector (Encroachment and Removal) which prima facie protects the structure of the Appellant No.1. By the said orders, orders of eviction passed by the Tahsildar have been set aside.

4. Shri Sawant appearing for the Respondent submitted that in case of the first order dated 28th August 2003 on which the Appellant No.2 is placing reliance, the area shown in the said order dated 28th August 2003 is in excess of the area found at the time of survey for the purpose of deciding the eligibility. He has pointed out that there is a difference between the name of the Appellant No.2 and the name of the Appellant before the Deputy Collector.

5. Ad-interim relief was refused by the Trial Court on 16th February 2004. The suit structure is in existence as of today. There is some material on record in favour of the Appellants in the form of orders passed by the Deputy Collector (Encroachment and Removal) in exercise of appellate power. In the face of said two orders, ad-interim relief in favour of the Appellants cannot be refused. The contentions which are raised by Shri Sawant will have to be considered after the reply is filed by the Respondent and necessary documents are produced before the Court.

6. In this view of the matter, the Appeal from Order deserves to be allowed. Accordingly, I pass the following order :

i) The impugned Judgment and Order is set aside. Ad-interim relief granted in Civil Application No.357 of 2004 on 17th March 2004 will continue to operate till the disposal of Notice of Motion No.714 of 2004.

ii) The Respondent will file Affidavit in reply within four weeks from today. The Notice of Motion will be finally decided on or before 15th July 2005. All contentions of the parties in the pending suit and Notice of Motion are expressly kept open.

iii) Appeal from Order is allowed in above terms with no order as to costs.

iv) Parties and concerned Court to act upon an authenticated copy of this order.

Judge.